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3 Honorable Tiffany M. Cartwright  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

JENNIFER KRALEY HEINRICH,  
Individually and as limited guardian ad litem  
for A.K.J., a Minor,

Plaintiff,

v.

CASTLE ROCK SCHOOL DISTRICT, a  
Municipal Corporation,

Defendant.

No. 3:23-cv-05945-TMC

**STIPULATED PROTECTIVE  
ORDER**

1. **PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Local Rule W.D. Wash. 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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2. **“CONFIDENTIAL” MATERIAL**

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3 “Confidential” material shall include the following documents and tangible things  
produced or otherwise exchanged:

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• Student education records protected by the Family Educational Rights and  
Privacy Act (FERPA); and  
• Student directory information protected by FERPA.; and  
• Any and all medical healthcare or mental healthcare records.

For any student records requested by Plaintiffs’ counsel that are for any students other than A.K.J., the District shall have 21 days to provide sufficient third-party notice to those students’ parents or guardians before providing any student records.

3. **SCOPE**

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

4.1 **Basic Principles.** A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this

1 agreement. Confidential material must be stored and maintained by a receiving party at a  
2 location and in a secure manner that ensures that access is limited to the persons authorized  
3 under this agreement.

4       4.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
5 ordered by the court or permitted in writing by the designating party, a receiving party may  
6 disclose any confidential material only to:

7               (a) the receiving party’s counsel of record in this action, as well as employees of  
8 counsel to whom it is reasonably necessary to disclose the information for this litigation;

9               (b) the officers, directors, and employees (including in house counsel) of the  
10 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
11 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
12 designated;

13               (c) experts and consultants to whom disclosure is reasonably necessary for this  
14 litigation,

15               (d) the court, court personnel, and court reporters and their staff;

16               (e) copy or imaging services retained by counsel to assist in the duplication of  
17 confidential material, provided that counsel for the party retaining the copy or imaging service  
18 instructs the service not to disclose any confidential material to third parties and to immediately  
19 return all originals and copies of any confidential material;

20               (g) the author or recipient of a document containing the information or a  
21 custodian or other person who otherwise possessed or knew the information.

22       4.3    Filing Confidential Material. Before filing confidential material or discussing or  
23 referencing such material in court filings, the filing party shall confer with the designating

1 party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating  
 2 party will remove the confidential designation, whether the document can be redacted, or  
 3 whether a motion to seal or stipulation and proposed order is warranted. During the meet and  
 4 confer process, the designating party must identify the basis for sealing the specific confidential  
 5 information at issue, and the filing party shall include this basis in its motion to seal, along with  
 6 any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the  
 7 procedures that must be followed and the standards that will be applied when a party seeks  
 8 permission from the court to file material under seal. A party who seeks to maintain the  
 9 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),  
 10 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result  
 11 in the motion to seal being denied, in accordance with the strong presumption of public access  
 12 to the Court's files.

14 **5. DESIGNATING PROTECTED MATERIAL**

15 **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each  
 16 party or non-party that designates information or items for protection under this agreement  
 17 must take care to limit any such designation to specific material that qualifies under the  
 18 appropriate standards. The designating party must designate for protection only those parts of  
 19 material, documents, items, or oral or written communications that qualify, so that other  
 20 portions of the material, documents, items, or communications for which protection is not  
 21 warranted are not swept unjustifiably within the ambit of this agreement.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 24 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
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unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form. (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial or trial proceedings. the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items. the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1     Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

1                   6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
 2 intervention, the designating party may file and serve a motion to retain confidentiality under  
 3 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden  
 4 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and  
 5 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and  
 6 burdens on other parties) may expose the challenging party to sanctions. All parties shall  
 7 continue to maintain the material in question as confidential until the court rules on the  
 8 challenge.

9                   7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
 10                   LITIGATION

11                   If a party is served with a subpoena or a court order issued in other litigation that  
 12 compels disclosure of any information or items designated in this action as  
 13 "CONFIDENTIAL," that party must:

14                   (a) promptly notify the designating party in writing and include a copy of the  
 15 subpoena or court order;

16                   (b) promptly notify in writing the party who caused the subpoena or order to  
 17 issue in the other litigation that some or all of the material covered by the subpoena or order is  
 18 subject to this agreement. Such notification shall include a copy of this agreement; and,

19                   (c) cooperate with respect to all reasonable procedures sought to be pursued by  
 20 the designating party whose confidential material may be affected.

21                   8.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22                   If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
 23 confidential material to any person or in any circumstance not authorized under this agreement,  
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25 the receiving party must immediately (a) notify in writing the designating party of the  
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1 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
 2 protected material, (c) and inform the person or persons to whom unauthorized disclosures  
 3 were made of all the terms of this agreement..

4. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
**MATERIAL**

5 When a producing party gives notice to receiving parties that certain inadvertently  
 6 produced material is subject to a claim of privilege or other protection, the obligations of the  
 7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
 8 provision is not intended to modify whatever procedure may be established in an e-discovery  
 9 order or agreement that provides for production without prior privilege review. The parties  
 10 agree to the entry of a non-waiver order under Fed. R. Evid. 502 as set forth herein.

11. **NON-TERMINATION AND RETURN OF DOCUMENTS**

12 Within 60 days after the termination of this action, including all appeals, each receiving  
 13 party must return all confidential material to the producing party, including all copies, extracts  
 14 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
 15 destruction.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
 17 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
 18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
 19 work product, even if such materials contain confidential material.

20 The confidentiality obligations imposed by this agreement shall remain in effect until a  
 21 designating party agrees otherwise in writing or a court orders otherwise.

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2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
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4 DATED : January 8, 2024  
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6 By: /s/ Thaddeus P. Martin  
7 Thaddeus P. Martin, WSBA No. 28175  
8 3015 Bridgeport Way West  
9 University Place, WA 98466  
10 (253) 682-3420  
11 [thad@thadlaw.com](mailto:thad@thadlaw.com)

12 DATED : January 17, 2024  
13

14 By: /s/ Haley E. Moore  
15 Patricia K. Buchanan, WSBA 19892  
16 Haley E. Moore, WSBA 48076  
17 Attorney for Defendants  
18 1000 Second Ave., 30<sup>th</sup> Floor  
19 Seattle, WA 98104  
20 (206) 462-6700  
21 [pkb@pattersonbuchanan.com](mailto:pkb@pattersonbuchanan.com)  
22 [hem@pattersonbuchanan.com](mailto:hem@pattersonbuchanan.com)

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
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25 DATED this 19th day of January, 2024.

26   
27 Tiffany M. Cartwright  
28 United States District Judge